

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARY LEANDRA CLUCK,

Petitioner,

vs.

CAROL PORTER,

Respondent.

NO. CV-06-5015-LRS

ORDER DISMISSING ACTION AND
DENYING PENDING MOTIONS AS MOOT

BEFORE THE COURT is Petitioner's Second Amended Petition, consisting of 546 pages (Ct. Rec. 60). In a separate affidavit (Ct. Rec. 61), Ms. Cluck indicates the Second Amended Petition contains only one sixth of the grounds she wishes to present, claiming the Department of Corrections and the Washington Correction Center for Women have impeded her efforts to file all her other grounds. On November 29, 2006, the Court received a supplement to Ms. Cluck's Second Amended Petition, consisting of 59 pages, and containing additional grounds 10-14 (Ct. Rec. 66). The Court notes Ms. Cluck also filed a Notice of Interlocutory Appeal on November 2, 2006 (Ct. Rec. 54)

The Court finds its directives to Ms. Cluck to present a short and plain statement of her claims has been unavailing. "Pursuant to Federal Rule of Civil Procedure 41 (b), the district court may dismiss

1 an action for failure to comply with any order of the court." *Ferdik*
2 *v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992), *cert. denied*, 506
3 U.S. 915 (1992). The district court should consider five factors when
4 deciding whether to dismiss a case for failure to obey a court order:

5 (1) The public's interest in expeditious resolution of
6 litigation; (2) the court's need to manage its docket; (3) the
7 risk of prejudice to the defendants; (4) the public policy
8 favoring disposition of cases on their merits; and (5) the
9 availability of less drastic alternatives.

10 *Ferdik*, 963 F.2d at 1260-61 (Citations omitted).

11 The first two factors weigh in favor of dismissal. The court's
12 and the public's interests are both served by a quick resolution of
13 cases. The third factor also favors dismissal. Respondent will not
14 be prejudiced if the claims are dismissed because Respondent has not
15 yet been served.

16 Only the fourth factor arguably weighs against dismissal.
17 However, Petitioner has failed to conform her pleadings to the rules
18 as directed by this Court. Furthermore, even when provided with forms
19 she has failed to provide relevant information (See e.g. Ct. Rec. 60,
20 page 2 of the petition form, item 1). Petitioner did not even provide
21 the name and location of the court issuing the judgment she is
22 presumably challenging.

23 Having granted Ms. Cluck numerous opportunities to present her
24 claims, the Court finds her continued taxing of judicial resources, in
25 blatant disregard of federal rules, unacceptable. The task of
26 deciphering Ms. Cluck's claims from her voluminous and often illegible
27 pleadings, and then disposing of them on the merits, is simply too
28 onerous.

1 As for the fifth factor, the only less drastic alternative would
2 be to allow Petitioner yet more time to amend her petition.
3 Petitioner, however, has already had several opportunities to clearly
4 and concisely present her claims, and has failed to do so. Allowing a
5 further extension would frustrate the purpose of the first two
6 factors; therefore, the fifth factor favors dismissal. On balance,
7 the four factors that favor dismissal outweigh any one that does not.
8 *Ferdik*, 963 F.2d at 1263 (*citing*, *Malone v. United States Postal Serv*,
9 833 F.2d 128, 133 n.2 (9th Cir. 1987) (four factors heavily supporting
10 dismissal outweigh one against dismissal), *cert. denied*, 488 U.S. 819
11 (1988)). Accordingly, **IT IS ORDERED** Ms. Cluck's Second Amended
12 Petition for Writ of Habeas Corpus (Ct. Rec. 60) is **DISMISSED WITHOUT**
13 **PREJUDICE. IT IS FURTHER ORDERED** all pending motions are **DENIED as**
14 **moot.**

15 **IT IS SO ORDERED.** The District Court Executive is directed to
16 enter this Order, enter judgment, forward a copy to Petitioner, and
17 close the file.

18 **DATED** this 15th day of December 2006.

20 ***s/Lonny R. Suko***

21 _____
22 LONNY R. SUKO
23 UNITED STATES DISTRICT JUDGE
24
25
26
27